

the trial court apparently ordered the plaintiff to serve another 4 years on the burglary conviction, a sentence that the plaintiff maintains he had already served. (Complaint, Facts, ¶¶ 5-6, p. 2) The plaintiff appealed, and the Tennessee Court of Criminal Appeals ultimately ruled in his favor. (Complaint, Facts, ¶ 7, p. 2) The plaintiff claims that he was forced to serve “approximately fifteen months in prison because of the trial court error.” (Complaint, Facts, ¶ 8, p. 2)

After his release from custody, the plaintiff avers that he filed a claim in the Tennessee Claims Commission (“the Claims Commission”) on September 26, 2001. (Complaint, Facts, ¶ 9, p. 3) According to the plaintiff, the Claims Commission denied his claim on December 15, 2004. (Complaint, Facts, ¶ 11, p. 3)

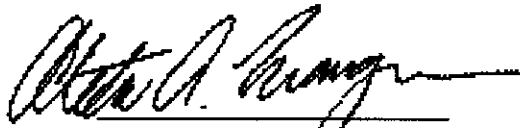
ANALYSIS

To state a claim under § 1983, the plaintiff must allege and show: 1) that he was deprived of a right secured by the Constitution or laws of the United States; and 2) that the deprivation was caused by a person acting under color of state law. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981)(overruled in part by *Daniels v. Williams*, 474 U.S. 327, 330 (1986)); *Flagg Bros. v. Brooks*, 436 U.S. 149, 155-56 (1978); *Black v. Barborton Citizens Hosp.*, 134 F.3d 1265, 1267 (6th Cir. 1998). Both elements of this two-part test must be met to support a claim under § 1983. *See Christy v. Randlett*, 932 F.2d 502, 504 (6th Cir. 1991).

Under the Prison Litigation Reform Act (PLRA), the Court is required to dismiss a prisoner-plaintiff’s complaint if it is determined to be frivolous, malicious, or if it fails to state a claim on which relief may be granted. 28 U.S.C. § 1915A(b). Although *pro se* complaints are to be construed liberally by the courts, *see Boag v. MacDougall*, 454 U.S. 364, 365 (1982), under the PLRA, “courts have no discretion in permitting a plaintiff to amend a complaint to avoid a *sua sponte* dismissal,” *McGore v. Wrigglesworth*, 114 F.3d 601, 612 (6th Cir. 1997).

The plaintiff seeks only money damages against the State of Tennessee. However, under the Eleventh Amendment, a state is not a person against whom a § 1983 claim for money damages may be asserted. *Lapides v. Board of Regents of the University System of Georgia*, 535 U.S. 613, 617 (2002)(citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 66 (1989)). More particularly, the Eleventh Amendment bars suits that “would impose a liability which must be paid from public funds in the state treasury.” *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). Congress has not abrogated Tennessee’s Eleventh Amendment immunity, and Tennessee has not expressly waived its right to sovereign immunity. See *Gross v. University of Tennessee*, 620 F.2d 109, 110 (6th Cir. 1980). Therefore, the plaintiff’s demand for money damages against the State of Tennessee is barred by the Eleventh Amendment. Because the State is absolutely immune from suit for money damages under § 1983, the complaint will be dismissed for failure to state a claim on which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B)(ii); 1915A(b)(1) and (2).

An appropriate Order will enter.


Aleta A. Trauger
United States District Judge